

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

APR 18 2016

SC Court of Appals

Appeal from Cherokee County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MARTIN

APPELLANT

APPELLANT CASE NO. 2015-001901

ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS	1
TABLE OF AUTHORITIES	2
STATEMENT OF ISSUE ON APPEAL	3
STATEMENT OF THE CASE	4
ARGUMENT	5
CONCLUSION	7
PETITION TO BE RELIEVED AS COUNSEL	8

TABLE OF AUTHORITIES

Cases

<u>Anders v. California</u> , 386 U.S. 738, 87 S.Ct. 1396 (1967).....	8
<u>State v. King</u> , 412 S.C. 403, 772 S.E.2d 189 (S.C. Ct. App. 2015), <u>Petition for Writ of</u> <u>Certiorari Granted</u> (March 28, 2016).....	5, 6

Other Authorities

McAninch, Fairey, and Coggiola, THE CRIMINAL LAW OF SOUTH CAROLINA (5 TH Ed. 2007) p. 402 (emphasis in the original).....	6
S.C. Code Ann. § 16-3-29.....	5

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in refusing to direct a verdict of acquittal when the State failed to prove a specific intent to commit murder, an element of attempted murder?

STATEMENT OF THE CASE

In May of 2014, the Cherokee County Grand Jury indicted Appellant Martin for attempted murder, indictment #2014-GS-11-513. On August 11, 2015, Martin proceeded to jury trial before the Honorable R. Keith Kelly. Don Thompson represented Martin at trial. Clifton Sams prosecuted the case. The jury found Martin guilty of the lesser included offense of assault and battery of a high and aggravated nature. Judge Kelly sentenced Martin to twenty (20) years. A timely notice of intent to appeal was served on August 13, 2015. This appeal follows.

ARGUMENT

The trial judge erred in refusing to direct a verdict of acquittal for attempted murder when the State failed to prove a specific intent to commit murder, an element of attempted murder.

On January 27, 2014, Appellant Martin was at home with his girlfriend, his friend, Billy Henderson, and Henderson's girlfriend Libby. (R. p. 73, lines 1-12). Nathan Hoffman went to Appellant's home to buy cigarettes. (R. p. 71, lines 4-14). Hoffman testified that while he was inside Appellant's home to buy cigarettes, Henderson accused Hoffman of flirting with Libby. (R. p. 73, lines 14 – 25). According to Hoffman when Henderson raised his arm to strike Hoffman and Hoffman moved to defend himself, Appellant jumped up and started yelling, 'no, not in my house. You are not going to disrespect me here.' (R. p. 73, line 24 – p. 74, lines 1-5). Hoffman testified that he left Appellant's home, they exchanged words, Appellant followed him down the street and stabbed him with a knife. (R. pp. 75-77).

At the close of the State's case Appellant moved for a directed verdict of acquittal. (R. p. 230, lines 10-17). The judge denied the motion. (R. p. 232, lines 3-11). The trial judge erred. The judge should have directed a verdict of acquittal for attempted murder because the State failed to prove a specific intent to commit murder.

"A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29. In State v. King, 412 S.C. 403, 411, 772 S.E.2d 189, 193 (S.C. Ct. App. 2015), Petition for Writ of Certiorari Granted (March 28, 2016), the South Carolina Court of Appeals held that specific intent to commit murder was an element of attempted murder. "We find the Legislature intended to require the State to prove

specific intent to commit murder as an element of attempted murder, and therefore the trial court erred by charging the jury that attempted murder is a general intent crime.” Id. 412 S.C. at 411, 772 S.E.2d at 193.

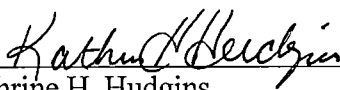
“According to the common law, one may be found guilty of an attempt to commit a crime if(1) with the *specific intent* to engage in conduct or achieve a result proscribed by that criminal offense he (2) commits an act in furtherance of that intent , which act goes *beyond mere preparation*. It is an endeavor to accomplish a crime which goes beyond mere preparation but which falls short of ultimate execution. *See La Fave* 583 (4th ed. 2003).” McAninch, Fairey, and Coggiola, *THE CRIMINAL LAW OF SOUTH CAROLINA* (5TH Ed. 2007) p. 402 (emphasis in the original). While attempted murder is now codified, the requirement of a specific intent for attempt crimes from the common law supports the holding in King that attempted murder requires a specific attempt to commit murder.

In the present case there was no objection to the instruction given to the jury in regard to intent. (R. p. 276, lines 11-14). Appellant, however, moved for a directed verdict of acquittal arguing, “Our motion would be the evidence presented does not support an attempted murder and that we would ask also based upon our objections to the hearsay evidence that came in.” (R. p. 230, lines 14-17). The State’s evidence did not support an attempted murder because the State failed to prove a specific intent to commit murder. The judge erred in refusing to direct a verdict of acquittal for attempted murder.

CONCLUSION

Based on the above argument, Appellant's conviction and sentence should be reversed and the case remanded for a new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of April, 2016.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MARTIN

APPELLANT

APPELLANT CASE NO. 2015-001901

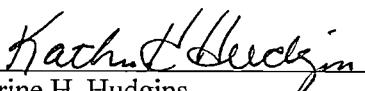
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Christopher E Martin states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge R. Keith Kelly, which was held on August 12, 2015, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Christopher E Martin.

Respectfully submitted,


Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 18th day of April, 2016.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Cherokee County

R. Keith Kelly, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CHRISTOPHER MARTIN

APPELLANT

APPELLANT CASE NO. 2015-001901

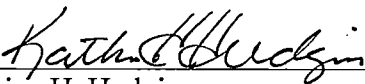
**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment and sentencing sheet;
- (2) Trial transcript volumes I and II.

I certify that this designation contains no matter which is irrelevant to this appeal.

April 18th, 2016


Kathrine H. Hudgins
Appellate Defender

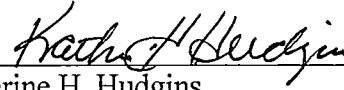
South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

April 18, 2016



Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

RECEIVED

APR 18 2016

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Cherokee County
R. Keith Kelly, Circuit Court Judge

RECEIVED
APR 18 2016
SC Court of Appeals

THE STATE,

RESPONDENT,

V.

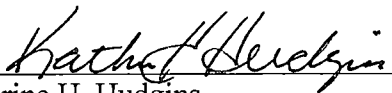
CHRISTOPHER MARTIN

APPELLANT

APPELLANT CASE NO. 2015-001901

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Christopher E. Martin, #307574 at Lieber Correctional Institution, PO Box 205, Ridgeville, SC 29472, this 18th day of April, 2016.



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of April, 2016.



(L.S.)
Notary Public for South Carolina
My Commission Expires: July 3, 2023.